

HELEN HOLLAND ET AL.

IBLA 80-300

Decided September 24, 1980

Appeal from decision of California State Office, Bureau of Land Management, holding J. M. Tungsten Nos. 1, 2, 3, 8, 9, and 10 quartz mining claims and J & M Millsites Nos. 1 through 5 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the documents had been deposited in the mail and postmarked by the postal authorities Oct. 22, 1979, will not excuse the late filing.

APPEARANCES: Willis Smith, Esq., Bishop, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Helen Holland, Vernon H. Holland, Galen Rowell, and Melinda Sanders appeal from a decision of the California State Office, Bureau of Land Management (BLM) dated December 19, 1979, declaring the J. M. Tungsten Nos. 1, 2, 3, 8, 9, and 10 quartz mining claims and J & M Mill Sites Nos. 1 through 5 abandoned and void. BLM stated that their filings and service fees were returned because the mining claims filings for these claims were not received on or before October 22, 1979, the date for filing claims located before October 21, 1976, as

required by the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a). The decision indicated that failure to file within the time limits shall be deemed conclusively to constitute an abandonment of the mining claims and they shall be void.

On appeal, appellants note that the filings were mailed to the California State Office, BLM, pursuant to the provisions of the "AMENDED NOTICE TO MINING CLAIMANTS," dated January 28, 1977. They contend the amended notice did not state that the required documents must be received in the office of the BLM on October 22, 1979. They contend they have substantially performed the requirements of 43 CFR 3833 by having the required materials mailed and postmarked on October 22, 1979.

[1] Section 314(b), FLPMA, 43 U.S.C. § 1744(b), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation--Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 1/] containing the information in paragraph (c) of this section shall be filed. (Emphasis added.)

The above quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. Therefore, the documents had to be received and date stamped by the California State Office by October 22, 1979, in order to be filed timely. Norman E. Brooks, 48 IBLA 16 (1980); Ray F. Coffee, 47 IBLA 217 (1980); John Sloan, 47 IBLA 146 (1980); C. F. Linn, 45 IBLA 156 (1980). The documents were not date stamped by the State Office until October 24,

1/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

1979. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) and 43 CFR 3833.4. The fact that the documents had been deposited in the mail and postmarked by the postal authorities October 22, 1979, will not excuse the late filing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Frederick Fishman
Administrative Judge

